

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No : 10/799,397
Applicant : Roy et al.
Filed : March 12, 2004
Title : Dry Mix Compositions and Method for Making and
Utilizing the Same Having an Enhanced Anti-Microbial
Shelf Life

TC/A.U. : 1794
Examiner : Stullii, Vera

Docket No. : 6357US

REPLY BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This paper is filed in response to the Examiner's Answer dated November 13, 2009, issued in connection with the above-identified U.S. patent application.

Remarks/Arguments begin on page 2 of this paper.

REMARKS/ARGUMENTS

In general, the Applicant respectfully submits that the record is clear concerning the applied prior art not disclosing all the limitations of the independent claims present in this application. However, in the Answer, the Examiner has raised some additional points to which the Applicant respectfully disagrees. For the sake of completeness, the Applicant will provide counter arguments below for all the main points raised by the Examiner.

Generally, with respect to claims 1 and 6-17, the Applicant has set forth the argument that the applied references of Navarro and Narayanaswamy et al. do not meet the limitations of the claims whether taken singly or in combination because neither of these prior art patents are directed to a dry mix composition as claimed and furthermore they do not teach the combination of:

- 1) 50-80% flour as claimed;
- 2) the amount of acid claimed; and
- 3) a mean particle size of the acid of about 150-840 microns as claimed.

In the Examiner's Answer, the Examiner argues that a dry mix composition and moisture form batter, and a baked product is further produced from the batter. Essentially, it would seem that the Examiner is conceding that Narayanaswamy et al. is directed to a shelf stable batter but that such a batter could not be formed without dry mix. In other words, there must be some dry mix somewhere used to produce the shelf stable batter. However, this does not change the basic fact that the Narayanaswamy et al. reference is directed to a shelf stable, ready-to-bake batter and, therefore, one of ordinary skill in the art would not even look to the already baked product of Navarro in order to modify a batter intended to be placed in a storage shelf and used to make a baked product which would presumably be immediately consumed by a consumer as described by Narayanaswamy et al. to meet limitations on a dry mix composition.

In regard to the claimed 50-80% flour in a dry mix composition, the Examiner argues that the Narayanaswamy et al. disclosure of a batter comprising about 10-40% flour and about 5-30% moisture meets this limitation. Apparently, the Examiner presumes that 70-95% of the batter must have come from a dry composition and that the 10-40% disclosure of flour in the batter thus meets the limitation of 50% to about 90% flour in a dry composition. While it is unclear from the Answer, it would seem that the Examiner is arguing that, in order to make the batter disclosed in Narayanaswamy et al. on page 3, lines 1-22, one of ordinary skill in the art must have used a dry mix composition of about 50% to about 80% flour. Applicant respectfully disagrees. First and foremost, the reference simply does not discuss a dry mix composition, for use in a bakery product, comprising about 50% to about 80% flour. Furthermore, it would seem entirely reasonable that one would not use a dry mix composition at all. Rather, all the ingredients would be simply mixed together to produce the batter. Therefore, at no point would there be a dry mix composition that meets the limitations of the claim. Clearly, the order in which the ingredients are mixed is not discussed such that it is also quite possible that the water is added to the sugar, salt and palm oil hardstock, for example, before the flour. Again, the Examiner is holding that a dry mix according to the invention must exist in the batter of Narayanaswamy et al. as modified by the baked good of Navarro and this position is just not supported by the prior art disclosures.

Even if one were to assume that all the ingredients listed in column 3 were to be mixed together as a dry mix, the Examiner is reminded that Narayanaswamy et al. teaches against adding extra water. Indeed, in column 7, the moisture portion of the batter is specifically taught to come from various different ingredients. For example, total moisture includes moisture associated with the flour, starch, cocoa and liquid eggs if desired. See column 7, lines 41-45. In some embodiments, no added water is employed to formulate the batters. Rather, only pasteurized liquid eggs and residual moisture associated with the dry ingredients provide moisture. See, explicitly, column 7, lines 45-49. The Examiner's implication that somehow a dry mix is formed and then water is added thereto is simply speculation and is totally contrary to the teachings found

specifically within the Narayanaswamy et al. reference. To this end, the Board's attention is specifically drawn to column 7, lines 38-52.

In regards to the encapsulated acid, the Examiner argues that Navarro discloses from about 0.1 - 0.7% of encapsulated acid and cites column 4, lines 10-12. Applicant does concede that this particular prior art reference does show an encapsulated fumaric acid present from about 0.1% to about 0.7% in a bread dough based on flour weight. However, once again, no dry mix composition is disclosed nor is there any apparent reason why one would look to the bread dough of the baked good of Navarro to modify a shelf stable batter of Narayanaswamy et al. to produce a dry mix composition with the claimed amount of fumaric acid.

Finally, in regards to the disclosed mean size particles being between from about 70-140 microns meeting the limitation of the claim wherein the encapsulated acid has a mean particle size from about 150 microns to about 840 microns, the Examiner appears to concede that such a limitation is not directly shown in the prior art reference. However, the Examiner now argues that one of ordinary skill in the art would have been motivated to modify the particle sizes of the capsule depending on the desired thickness of the particle coating, the amount of active substance contained, the desired degree of delay for solubility, etc. Further, according to the Examiner, one of ordinary skill in the art would have been motivated to modify the particle size of the capsule depending on the specific type of bakery product, the desired amount of acid in the product, specific temperature and moisture conditions associated with the various bakery products. However, Navarro specifically teaches away from the Examiner's comments as addressed more fully on page 11 of the Appeal Brief. For example, Navarro specifically teaches that the mean particle size should be set at about 70-140 microns, preferably about 80-130 microns and most preferably 105 microns (see column 3, lines 50-56). That is, this prior art specifically teaches to move away from the minimum 150 microns of the invention by teaching a maximum of 140 microns, a preferred size of 130 microns and a more-preferred size of 105 microns.

The Examiner then addresses the Appellant's arguments regarding the melting point temperature. According to the Examiner, Navarro discloses an encapsulated acid having a coating melting point above 125°F and cites column 2, lines 57-58. As far as the Examiner is concerned, a melting point above 125°F encompasses a minimum point of 150°F. The Examiner is seen to be clearly wrong on this point and the Board's attention is specifically directed to page 12 of the Brief and the argument presented regarding claim 18.

Turning now to claim 35, the Examiner argues that the Applicant has attacked the references individually. The Examiner's attention is drawn, for example, to page 17 of the Brief wherein the Applicant specifically states "Narayanaswamy et al. nor Navarro, even when modified by Willyard, even teach 50-80% flour, or the about 0.01% - 1% encapsulated acid claimed." Clearly, Applicant was attempting to state that all three references, even when combined, do not meet the limitations of the claim. More importantly, Applicant notes that Willyard teaches an internal doughnut temperature of 150°F obtained upon reheating a fried doughnut in a microwave. A rejection that modifies a batter in view of a baked product in view of a microwave reheated fried product in order to get an equivalence to deep frying batter in oil to produce a fried bakery product having an internal cooked temperature of 170°F, as required by claim 35, is unreasonable.

In view of the above arguments, reversal of all rejections and allowance of the claims are respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Everett G. Diederiks, Jr.", written over a horizontal line.

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